

**Appl. No. 09/419,927**  
**Amdt. dated February 17, 2004**  
**Reply to Office Action of December 31, 2003**

**REMARKS/ARGUMENTS**

Reconsideration of this application is respectfully requested.

Claims 10 and 12 through 15 are pending in the application with claim 10 having been amended.

The amendment to the specification filed October 6, 2003 has been objected to under 35 U.S.C. 132 because, according to the Examiner, it introduces new matter into the disclosure.

The Examiner has stated: "The added material which is not supported by the original disclosure is as follows: the amendment to the table on page 14, changes the cloning efficiencies of two for the experiments. Applicant states that the amendment to the specification is filed to correct two errors in the reported results of the experiments, however, there is no apparent error to the values. The cloning efficiency values are changed from 11/15 to 5/15 for one experiment and 3/15 to 15/15 for the second experiment. This amendment alters the results dramatically, and there is no support for this amendment elsewhere in the specification."

In the course of reviewing his case file pursuant to preparing the amendment filed October 6, 2003, Applicant's attorney discovered that the values given in the table on page 14 of the application did not match those provided by the Applicant in his original description of the invention provided to counsel. It is believed this resulted from a transcription error in the preparation of the patent application. Not wanting a patent to issue containing erroneous data, Applicant's attorney amended the table to substitute the correct cloning efficiency values

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in the two experiments.

Now, the Examiner has required the Applicant to cancel the alleged "new matter", putting the Applicant in the untenable position of having to permit a patent to issue with known errors. This cannot be right.

It should be recognized that the errors, if corrected, would have no effect on the scope or interpretation of the claims, which are directed to a composition that is a combination of an extensin and at least one pectin. They are not directed to such a combination that has a particular cloning efficiency. Indeed, there is nothing at all in the claims directed to cloning efficiency.

The Examiner's attention is directed to Ex parte Marsili, Rossetti, and Pasqualucci, 214 USPQ 904. There, the Board of Appeals held that refusing to correct the structural formula of the applicant's claimed compounds that had been found patentable by the Examiner would lead to the absurdity of issuing a patent that teaches the public, in its specification, the wrong scientific formula for the new products. It was observed that "No one derives any benefit from an erroneous statement - neither applicants nor the public," and "The *product*, not the formula or name, is the invention."

Here, no one will derive any benefit from a patent issuing with erroneous data, and it is the composition, not the cloning efficiency data, that is the invention.

Accordingly, it is requested that the objection to the amendment to the specification filed October 6, 2003 under 35 U.S.C. 132 because it introduces new matter into the disclosure be withdrawn.

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Claims 10 and 12-15 have been rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. According to the Examiner, the claims contain subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

Specifically, the Examiner has stated: "Instant claims are directed to a composition comprising an extensin and at least one pectin, wherein the combination of pectin with extensin is in a ratio higher than that seen in natural plant cells. However, instant specification does not describe the ratio of extensin to pectin. The instant specification states that a combination of pectin and extensin higher than seen in natural plants can be used in a therapeutic method to modulate immune responses, (see the bridge between pages 10 and 11). However, the specification does not disclose what said ratio is, or how much higher than natural value should it be. The specification discloses the structure of extensin and the structure of pectin is well known in the art. However, instant claims are directed to a composition comprising extensin and pectin in a specific ratio, however, instant specification does not disclose enough information regarding what the ratio of extensin and pectin should be to satisfy the written description provision, under 35 U.S.C. 112, first paragraph.

This rejection is respectfully traversed. The specification discloses in the table on page 14 three experiments that were run by Applicants in which 50 % sugar beet fiber, i.e., extensin, was combined with 50 % citrus pectin, or beet pectin, or apple pectin. This is a clear disclosure of a 1/1 ratio of extensin to pectin.

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Accordingly, it is requested that the rejection of claims 10 and 12-15 under 35 U.S.C. § 112, first paragraph, be withdrawn.

Claims 10 and 12-15 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention.

Specifically, the Examiner has stated: "Claim 10 recites'...., wherein the combination of pectin with extensin is in higher ratio that that seen in natural plants cells..', however, it is unclear how much of extensin and how much of pectin should the claimed composition comprise? The metes and bounds of the claim cannot be ascertained. Reciting the ratio of extensin and pectin, would overcome this rejection."

The claims have now been amended to recite the ratio of extensin (50 %) to pectin (50%). This ratio, as noted above, is supported in the specification as filed in the table on page 14.

Accordingly, it is requested that the rejection of claims 10 and 12-15 under 35 U.S.C. § 112, second paragraph, be withdrawn.

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In view of the foregoing, it is submitted that this application is now in condition for allowance and an early Office Action to that end is earnestly solicited.

Respectfully submitted,

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